

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHANTEL PIPPENS,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 239883

Wayne Circuit Court

LC No. 01-011884

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

The prosecutor appeals as of right from an order of dismissal entered by the circuit court following a determination that defendant's statements were not admissible. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with three counts of felony-murder, MCL 750.316, and one count of arson, MCL 750.72, after three people died in a house fire on September 23, 2001. Defendant challenged the admissibility of her statements to the police. Following a hearing, the trial court granted the motion because the forensic psychologist who examined defendant could not state with absolute certainty that defendant understood and was capable of waiving her rights.

In reviewing a trial court's ruling, this Court must examine the entire record and make an independent determination. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). The trial court's findings of fact will not be disturbed unless they are clearly erroneous. *People v LoCicero (After Remand)*, 453 Mich 496, 500; 556 NW2d 498 (1996). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). However, this Court will ordinarily defer to the trial court's resolution of factual issues, especially when it involves the credibility of witnesses whose testimony conflicts. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

Statements made during a custodial interrogation are inadmissible unless the defendant voluntarily, knowingly and intelligently waives her Fifth Amendment rights. *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). The burden is on the prosecution to prove a valid waiver of rights by a preponderance of the evidence. *People v Cheatham*, 453 Mich 1, 27; 551 NW2d 355 (1996). Whether a waiver of *Miranda* rights is voluntary and whether an

otherwise voluntary waiver is knowing and intelligent are separate questions. *Howard, supra*, 226 Mich App at 538. The only issue in this case is whether defendant's waiver of her rights was knowing and intelligent.

In determining whether the defendant knowingly and intelligently waived her *Miranda* rights, an objective standard is used because a defendant's subjective understanding cannot be known. *People v Daoud*, 462 Mich 621, 634 n 10; 614 NW2d 152 (2000). Such a determination depends on the totality of the objective circumstances surrounding the waiver, including the defendant's education, experience, conduct, intelligence and capacity to understand the warnings given as well as the credibility of the police officers' testimony. *Id.*; *Howard, supra*. A knowing and intelligent waiver requires that the defendant is aware of her rights, knows that the state intends to use her statements to secure a conviction, and knows that she can remain silent and request a lawyer. *Daoud, supra* at 640-641; *Cheatham, supra* at 29. "[A] knowing and intelligent waiver of the *Miranda* rights does not require that a suspect 'understand the ramifications and consequences of choosing to waive or exercise the rights that the police have properly explained to h[er].' Rather, a very basic understanding is all that is necessary for a valid waiver." *Daoud, supra* at 642 (citation omitted).

The evidence showed that defendant was a junior in high school, the appropriate grade for her age. Although she was in special education classes, she was apparently educable, see *People v Inman*, 54 Mich App 5, 8; 220 NW2d 165 (1974), and there was no evidence that she was failing school. According to Barbara Simon, the investigator who questioned defendant, defendant demonstrated an ability to read by reading her rights out loud with little difficulty. Simon asked if defendant understood each right by paraphrasing it. Defendant stated that she understood and initialed each right to signify her awareness and understanding. As demonstrated by giving appropriate answers to specific questions, defendant was able to understand what was said to her. Defendant did not exhibit any problems reading and understanding her rights until examined for competency after the fact. Although she tested well below average in an IQ test, "[l]ow mental ability in and of itself is insufficient to establish that a defendant did not understand h[er] rights." *Cheatham, supra* at 36. Moreover, the examiner testified that the accuracy of that test was questionable in light of other test results and defendant's adaptive skills and concluded that defendant was malingering and was in fact most likely capable of understanding and waiving her rights. Such evidence was sufficient to establish a valid waiver by the preponderance of the evidence standard.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood